IN THE HIGH COURT OF RAJASTHAN AT JODHPUR

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.589 of 1999

For Approval and Signature :

HONOURABLE THE ACTING CHIEF JUSTICE MR.J.M.PANCHAL

HON'BLE MR.JUSTICE BHANWAROO KHAN

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes

2 To be referred to the Reporter or not ? Yes

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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Smt.Basant Parakh - Appellant
Versus
State of Rajasthan & ors. - Respondents

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Appearance :
Mr.B.C.Parakh, for the appellant
Mr.Shyam Ladrecha, Additional Government Advocate for the respondents

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.J.M.PANCHAL

and

HON'BLE MR.JUSTICE BHANWAROO KHAN

Date : August 16,2007

JUDGMENT

(Per : HONOURABLE JUSTICE MR.BHANWAROO KHAN)

The appellant has preferred this appeal against the judgment dated 25.1.1999 passed by the learned Single Judge in S.B.Civil Writ Petition No.1648/1997, whereby the learned Single Judge has set aside the order dated 28.3.1997 passed by the Rajasthan Civil Services Appellate Tribunal quashing order dated June 6, 1996 relieving the appellant from service by accepting her application for voluntary retirement from service.

The brief facts of the case are that the appellant was initially appointed and confirmed as Assistant Teacher in Education Department on 12.10.1961 & 12.10.1962 respectively. After completion of 23 years of service she submitted an application under Rule 244 of the Rajasthan Civil Service Rules (hereinafter referred to as the Rules) on 12.8.1984 seeking voluntary retirement, if she had completed 20 years' qualifying service. But no action was taken by the respondent for 2 years. Thereafter, she filed D.B.Civil Writ Petition No.2245/1986. The said writ petition was, however, not allowed, but was disposed of with the direction to allow the petitioner to complete her qualifying service. Thereafter, she joined the service and remained in service till 1995. The respondents all of sudden on 14.6.1995 retired her voluntarily w.e.f. 16.5.1988. Feeling aggrieved of the said order, she preferred D.B.Civil Writ Petition No.1905/1995 challenging the vires of Rule 244 of the Rules and the said impugned order. While disposing of the said writ petition on 10.3.1996, it was observed that

since the petitioner has already approached the Rajasthan Civil Services Appellate Tribunal and Rule 244(1) of the Rajasthan Service Rule was not found ultravires of the Constitution or ultravires of the provisions of the statute, the writ petition was dismissed. The matter already pending with the Rajasthan Civil Services Appellate Tribunal was finally culminated in her favour. The respondents filed S.B.Civil Writ Petition No.1648/1997 against the said order and the learned Single while quashing the order dated 18.3.1997 passed by the Rajasthan Civil Services Appellate Tribunal dismissed the writ petition filed by the respondents.

The respondents have not filed reply in the original appeal, but submitted written arguments in the said appeal before the Rajasthan Civil Services Appellate Tribunal.

The learned Single Judge has decided that the appellant cannot be allowed to blow hot and blow cold at the same time and she herself when wants to complete the remaining period of qualifying service the court allowed her to complete the same. She was not authorised to remain in service after 16.5.1988 and she cannot be allowed to abuse the process of law by approaching different forum on the same cause of action and for same relief. She almost filed 6 cases in different forum for getting her voluntary retirement through.

The learned counsel for the appellant submitted that original letter dated 12.8.1984 seeking voluntary retirement by the

appellant clearly reveals that after completion of her 23 years of service in the Department, she wanted to have voluntary retirement on the condition that in case her qualifying service of 20 years is found to be complete by the Department, she may be retired voluntarily. The Department did not reply. She filed D.B. Civil Writ Petition No. 2245/86 and though the writ petition was not allowed but she was allowed to complete her qualifying service for voluntary retirement. Thereafter, she joined the Department and remained on duty till 1995 when all of sudden she was voluntarily retired w.e.f. 16.5.1988. But before this on 17.1.1991 she has withdrawn the application for voluntary retirement pending before the respondents. The letter seeking voluntary retirement was conditional one, no action, whatsoever, could have been taken by the respondents on the said letter. More-so, while remaining in service, she has withdrawn the letter for voluntary retirement on 17.1.91. The respondents were neither authorised nor entitled to retire her voluntarily in the year 1995 on the letter dated 12.8.1984, which was a conditional one.

Per contra the learned counsel argued that when the Division Bench judgment taking a lenient view allowed her to complete her remaining period of qualifying service and in compliance thereof she joined after 2 years or more, the period of absence was regularised only on presumption that she would retire after completion of period of qualifying service, otherwise for remaining absence the department could have initiated departmental enquiry against her.

Now, she cannot be allowed to take the benefit of mistake of her own. The department after finding the mistake, retired her voluntarily and her application of 17.1.91 is of no avail to her as her own application of seeking voluntary retirement comes to an end automatically on 16.5.1988 after completion of period of qualifying service. The appellant is in habit of abusing the process of law by filing as amany as 6 cases relating to this cause of action and she cannot be allowed to choose different forum for the same relief.

The learned counsel for the respondents also pleaded that the appellant filed the writ petition on the premise that she stood voluntarily retired and, therefore, entitled to pensionary benefits. The Hon'ble High Court taking sympathetic view allowed her to serve for remaining period of qualifying service and thus as per direction of the High Court given in D.B. Judgment she was only entitled to serve for the deficit period of qualifying service and this intention is clearly borne out as given by the appellant. The withdrawal application dated 17.1.1991 is not opened to the appellant because the High Court only allowed her to serve and complete the remaining period of qualifying service. An application filed under Rule 244 deemed to be accepted automatically. Since the appellant herself has been under bonafide impression that she stood retired as a government servant, she is not entitled to take different stand and thus, estopped from claiming to remain in service.

Rule 244 of the Rules speaks that a government servant

may, after giving at least 3 month's previous notice in writing to the Appointing Authority, retire from service on the date on which he complete 20 years of qualifying service or attains the age of 45 years whichever is earlier. A government servant who has given notice seeking retirement under clause (a) of sub-rule (1) of Rule 244, may presume acceptance of the notice of retirement and the retirement shall be effective in terms of the notice automatically unless an order in writing to the contrary has been issued by the Competent Authority and served upon the Government servant.

In the instant case, when the letter written by the appellant was conditional one, as she was not aware whether she has completed 20 years of qualifying service or not, she requested the Department that in case department finds that she has completed qualifying service of 20 years then and then only her voluntary retirement may be accepted. Factually as per department and also admitted by the parties that she has not completed the qualifying service. The letter dated 12.8.1984 should have died on the date of presentation itself. This clearly shows that the letter of request for seeking voluntary retirement was a conditional one, which can neither be accepted nor can be acted upon. The order dated 9.7.1987 passed in D.B.Civil Writ Petition No.2245/1986, which allowed her to complete qualifying service, the respondents could not base their judgment on the said decision simply because as per direction in the said D.B. Order after completion of qualifying service the appellant was retained in

service and continued to serve till 1995. Meanwhile on 17.1.91 she withdrew the application for voluntary retirement, the department was not in any case authorised to retire her voluntarily as the initial letter for seeking voluntary retirement was conditional. The department acted illegally in the year 1995, by retiring her voluntarily from the retrospective date i.e. 16.5.1988, which is in no case can be done by the respondents. Hence, the impugned order of retiring her voluntarily is illegal, void and without any effect as the same being the conditional.

In 1999 LAB.I.C.190 Amar Singh Rajpurohit vs. State of Rajasthan & Ors., it has been held that there is no provision to accept conditional voluntary retirement application. The application of the appellant was certainly with a condition and department could not have accepted the same. So the automatic acceptance of voluntary retirement as per Rule 244 of the Rules would not arise.

More-so, by conduct of both the parties as after completion of remaining period to complete the qualifying years of service as per direction of the High Court she remained in service till 1995 and the respondent allowed her to serve in the Department till 1995 reveals that neither the party was intending to either retire her voluntarily or the appellant was intending to seek voluntary retirement. In addition to, while remaining in service she withdrew her application for seeking voluntary retirement on 17.1.1991. Of course when the initial letter of request for seeking voluntary retirement was conditional one, it could

not have been neither accepted nor the appellant could have acted upon it. There was no necessity or occasion for the appellant to withdraw her letter of notice of retirement, but as a matter of caution, when she withdrawn voluntary retirement application, the respondents were not authorised in Year 1995, to retire her retrospectively from 16.5.1988. Resultantly, the special appeal deserves to be accepted.

Hence, the special appeal succeed and is allowed. The judgment of learned Single Judge dated 25.1.1999 is set aside and that of Rajasthan Civil Services Appellate Tribunal dated 28.3.1997 is restored. There is no order as to costs.

(BHANWAROO KHAN)J. **(J.M.PANCHAL) ACTG.C.J.**

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